

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-634

October 9, 1998

PUBLIC UTILITIES COMMISSION  
Investigation into Area Code  
Relief

**PERMANENT  
PROTECTIVE ORDER**

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At the October 1, 1998, Technical Conference held in this docket, the parties agreed that the terms of the September 25th Amended Temporary Order should be made permanent. In addition, the Office of the Public Advocate requested that it be provided access to confidential information. While several parties objected to the OPA's request, the Hearing Examiner (in conjunction with the Commissioners) determined that the OPA should be provided access to confidential information because there had been no showing of a greater likelihood of disclosure by the OPA than by the Commission.

Accordingly, it is ORDERED that the terms of the Permanent Protective Order are as follows:

1. That a party may designate information sought in this proceeding which it believes to be "Trade Secret Information" or "Confidential Commercial Information" as described in M.R.Civ.P. 26(c) and M.R.Evid. 507, as "Designated Confidential Information." Access to Designated Confidential Information shall be limited as set forth in this Order.
2. That all Designated Confidential Information shall, unless removed from the coverage of this Order as provided in paragraph 3 below, be and remain confidential. Designated Confidential Information shall not be disclosed for any purpose other than the purposes of this proceeding, and then solely in accordance with this Order. No person to whom access to Designated Confidential Information is accorded pursuant to paragraph 4 of this Order shall disclose or reveal, directly or indirectly, the content of the Designated Confidential Information to others, except as provided in paragraph 4.
3. That the parties to whom Designated Confidential Information is furnished may challenge designation of documents or other information as confidential by motion to the Commission and upon reasonable prior notice to the parties and an

opportunity for hearing. Upon the entry of an order granting such a motion, the provisions and restricts of this order shall cease to bind any party or other person with respect to the documents or information that the Order granting the motion shall have expressly and clearly removed from the coverage of this Order.

4. That, unless this Order is modified, access to Designated Confidential Information shall be limited to (i) Commission members and counsel, (ii) Commission employees, independent consultants or experts retained by the Commission, and (iii) the Office of the Public Advocate.
5. Notwithstanding the restrictions contained in paragraph 4 of this Order, as part of this proceeding the Commission or its employees may distribute to the Federal Communications Commission (FCC) any material designated Confidential under the terms of this Order. The information shall be provided to the FCC under the condition that the FCC agrees to maintain the material as confidential in accordance with the agency's own rules on confidentiality.
6. Notwithstanding any other provision of this Order, before any disclosure shall occur, any individual (other than a Commission or OPA employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this PROTECTIVE ORDER, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped Confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information Confidential.
7. Before disclosing a stamped Confidential document to any person who is listed in paragraph 4 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as Confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted.

8. That no copies of Designated Confidential Information furnished by a party shall be circulated to persons other than those persons who are authorized under paragraph 4 of this Order to obtain Designated Confidential Information. Documents offered in evidence may be copied as necessary for that purpose. Persons authorized under paragraph 4 hereof also may take such notes as may be necessary solely for the purposes of this proceeding. These notes shall also be treated as Designated Confidential Information.
9. That the restrictions upon, and obligations accruing to, persons who become subject to this Order shall not apply to any Designated Confidential Information submitted in accordance with paragraph 1 of this Order if the Commission rules, after reasonable notice and hearing, that the Designated Confidential Information was publicly known at the time it was furnished or has since become publicly known through no fault of the receiving party.
10. That where reference to Designated Confidential Information is required in pleadings, briefs, other legal documents, or argument, that reference shall be by citation of title or exhibit number only or by some other non-confidential description to the extent possible. In those circumstances, counsel shall make every reasonable effort to preserve the confidentiality of material in the sealed record. If counsel shall include Designated Confidential Information in pleadings, briefs, other legal documents, or arguments, that portion of the documents or that portion of the transcript of the argument containing Designated Confidential Information shall be maintained under seal.
11. That the Commission may draw upon all Designated Confidential Information in the record in the deliberation of any decision or order that it may issue, but the Commission will avoid the reproduction in its decision of any Designated Confidential Information.
12. That should any appeal of, or other challenge to, the Commission's decision in this proceeding be taken, any portions of the record that have been sealed in accordance with paragraph 7 above shall be forwarded to the courts of this State in accordance with applicable law and procedures, but under seal and so designated in writing for the information of the court.
13. That this Order does not preclude any party from (a) objecting under the Maine Rules of Evidence to the admissibility of any Designated Confidential Information produced by a party or (b) objecting, on any substantive or

procedural ground, to any subsequent data request or other request for information.

14. That this Order may be modified on motion of any party or on the Commission's own motion upon reasonable prior notice to the parties and an opportunity for hearing.
15. That within forty (40) days after the conclusion of this docket, each party to whom Designated Confidential Information has been made available shall return the Designated Confidential Information and shall destroy all documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Information; provided, however, that the sealed record shall be retained by the Commission and shall continue to remain subject to the confidentiality requirements of this Order, until otherwise ordered by the Commission.

Dated at Augusta, Maine this 9th day of October, 1998

BY ORDER OF THE HEARING EXAMINER

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Trina M. Bragdon